

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

DARLA LYONS, )  
                        )  
Plaintiff,         )  
                        )  
v.                    )              Case No. CIV-11-076-KEW  
                        )  
AMEDISYS HOME HEALTH, INC.,     )  
a Domestic for Profit         )  
Corporation;                 )  
AMEDISYS HOME HEALTH, INC. OF     )  
OKLAHOMA, a Domestic for         )  
Profit Corporation;             )  
AMEDISYS QUALITY OKLAHOMA,     )  
LLC, a Domestic Limited         )  
Liability Company; and         )  
AMEDISYS OKLAHOMA, LLC,         )  
a Domestic Limited Liability     )  
Company,                 )  
                        )  
Defendants.             )

**FILED**

NOV 16 2011

**WILLIAM B. GUTHRIE**  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

OPINION AND ORDER

This matter comes before the Court on this Court's show cause Order filed October 12, 2011 as well as Defendants' Motion to Dismiss filed October 31, 2011 (Docket Entry #38). Plaintiff initiated this action in the District Court in and for Carter County, Oklahoma on August 9, 2010. Defendants removed the action to the United States District Court for the Western District of Oklahoma on September 21, 2010. Ultimately, the case was transferred to this District on February 14, 2011.

After the parties consented to the jurisdiction of the undersigned to preside over this case, this Court conducted a Scheduling Conference in which counsel for all parties participated. The first indication of a problem with Plaintiff's participation in this lawsuit occurred with the filing of

Defendants' Motion to Compel on September 1, 2011. Defendants reported that Plaintiff had not responded to their written discovery requests after repeated contact with Plaintiff's counsel. Plaintiff's counsel eventually responded to the Motion that Plaintiff's whereabouts were unknown despite attempting various avenues of communication with Plaintiff and she had not provided any of the information needed to respond to Defendants' discovery requests. Plaintiff's counsel also requested that they be allowed to withdraw from further representation of Plaintiff due to her lack of communication.

This Court allowed counsel to withdraw and entered a show cause order, directing Plaintiff to file a written response to the show cause Order by October 24, 2011. The Order further stated that "PLAINTIFF'S FAILURE TO FILE THE RESPONSE OR OTHERWISE COMMUNICATE WITH THIS COURT SHALL RESULT IN THE IMMEDIATE DISMISSAL OF THIS CASE WITHOUT FURTHER NOTICE OR HEARING." The Clerk was ordered to serve Plaintiff with the Order at her last known address by certified mail. On November 3, 2011, the letter containing the Order was returned to the Clerk "unclaimed" and "unable to forward." Plaintiff failed to respond to the show cause order as directed.

Subsequently, Defendants filed a Motion to Dismiss, reciting Plaintiff's transgressions in discovery and failing to respond to this Court's Order. Defendants sought dismissal under both Fed. R. Civ. P. 37(d) and 41(b). Defendants certify that they mailed the Motion to Plaintiff at her last known address. To date, Plaintiff

has failed to file a response to the Motion in contravention of the deadline established by LCvR EDOK 7.1(f) and is in default.

Plaintiff's failure to prosecute this action and comply with this Court's Order constitutes an adequate basis for dismissal. Fed. R. Civ. P. 41(b). Plaintiff has failed to keep her contact information current with the Court and opposing counsel such that her participation in this action can be compelled. Every effort has been made to contact Plaintiff based upon the last information Plaintiff made available to the Court and her own former counsel. Additionally, dismissal is an appropriate sanction for the failure to answer properly propounded discovery requests. Fed. R. Civ. P. 37(d). Plaintiff's failure to respond to Defendants' discovery requests subjects her to the appropriate sanction of dismissal. Because this Court has not been able to communicate these rulings to Plaintiff, the dismissal will be done without prejudice.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss filed October 31, 2011 (Docket Entry #38) is hereby **GRANTED**. As a result, this case is hereby **DISMISSED WITHOUT PREJUDICE** for the reasons stated herein.

IT IS SO ORDERED this 16<sup>th</sup> day of November, 2011.



KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE